

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
Indianapolis, Indiana 46204**

STATE OF INDIANA    )  
                                  ) SS  
COUNTY OF MARION )

**DOROTHY W. KAISER,**  
    **Complainant,**

**DOCKET NO. EMse78010012  
EEOC NO. 053780254**

**v.**

**SILHOUETTE NATIONAL HEALTH  
SPAS, INC.,**  
    **Respondent.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER**

On August 3, 1979, R. Davy Eaglesfield, III, Hearing Officer in the above cause, entered his recommendation. No party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-13 and Ind. Admin. R. and Reg. §(22-9-1-6)-35 (A).

Being duly advised in the premise, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

**Signed: August 24, 1979**

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**SILHOUETTE NATIONAL HEALTH**  
**SPAS, INC.,**  
**Respondent.**

**RECOMMENDED FINDING OF FACT AND CONCLUSIONS OF LAW, AND ORDER**

The above-captioned case was the subject of an administrative hearing on July 31, 1979. R. Davy Eaglesfield, III, the Hearing Officer for the Indiana Civil Rights Commission, having heard and seen all the evidence presented in this matter and being duly advised in the premises now makes the following Recommended Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Complainant, Ms. Kaiser, was an hourly paid receptionist and exercise helper, last employed by Respondent, Silhouette National Health Spas, Inc., in its men's division at its northside facility from June, 1977 until November 29, 1977. Complainant had been employed earlier by Respondent from August 1973 until Christmas of 1975 in its men's division at its northside facility. Complainant was terminated by independent manager, Mr. Tom Rossi, on November 29, 1977.

2. Respondent, Silhouette National Health Spas, Inc., (Silhouette) is an Indiana corporation which until mid-1978 owned and operated four (4) health spas in the City of Indianapolis, Indiana. A facility was located on each side of the City, *i.e.*, north, south, east and west.
3. Each facility provided physical fitness services for persons who purchased memberships. Approximately one-third (1/3) of the area of each facility was comprised of the exercise floor; one-third (1/3) of the area was comprised of the showers, toilets and lockers (locker room); and one-third (1/3) of the area was comprised of the "spa" area. The exercise floor contained various universal exercise equipment, exercise bikes, vibrating machines, and other equipment for the purpose of physical exercise. The locker room area contained the necessary fixtures for changing and storing of clothes, showering and attending to bodily needs. sun rooms and a massage room were also located in this area. The locker room was entered from the exercise floor or from the spa area. The spa area was entered from the locker room area only. The spa area consisted of a swimming pool, whirlpool, sauna, steam and inhalant room.
4. Each facility was open six (6) days a week, Monday through Saturday, for twelve (12) hours each day except for Saturday, when it was open for ten (10) hours. On three (3) alternate days a week each facility was open for male members (men's division) and three (3) alternate days a week each facility was open for female members (ladies' division). Two (2) facilities each day were open for male members and two (2) facilities were open for female members.
5. Each facility was staffed by an independent manager, and, depending upon the volume of traffic, three (3) to six (6) spa technicians to operate the facility. All spa technicians in the men's division were male. All spa technicians in the ladies' division were female. The northside men's division was the only facility division that had a receptionist-exercise helper. That was Ms. Kaiser. No division at any facility has had such a position since November 29, 1977.
6. On October 14, 1977, Silhouette stock (previously owned by Mr. Donald Gilman) was sold to new owners who turned over the management of the facilities to a different entity by the name of Twenty First Century Health Spas, Inc. (21<sup>st</sup>

Century). 21<sup>st</sup> Century, later in 1978, purchased the assets of Silhouette and it currently operates the four (4) facilities, physically unchanged, with the same separate male and female divisions.

7. Spa technicians are hired by an independent manager of each division. Their duties are to provide service to the member by: taking medical histories and measurements, developing exercise routines, demonstrating the exercises, making certain all areas (including the locker room and spa areas) are clean and tidy, keeping the locker room area functional and properly supplied with necessary toilet items, checking the spa area to make certain the proper temperatures are being maintained in the pool, whirlpool, steam and sauna rooms, chemically testing the pool and maintaining the proper chemical levels, keeping the inhalant room supplied with inhalant, relaying telephone messages to members, generally offering assistance and paying personal attention to the well-being of members during their time at the facility.
8. Approximately fifteen percent (15%) of a spa technician's time is spent in the locker room and spa areas.
9. During both periods of her employment, Ms. Kaiser spent the majority of her time at the receptionist's desk checking the identification of members and guests, extracting and refilling exercise program cards used by members during their visits and answering the telephone. Prior to Mr. Rossi becoming manager in September 1977, Ms. Kaiser, on occasion, would perform other duties including the taking of medical histories, measuring male members and demonstrating exercises on the floor. These other duties were performed, according to Ms. Kaiser, only when male technicians were busy with other tasks. After Mr. Rossi became manager, Ms. Kaiser was prohibited from taking medical histories, measuring male members or demonstrating exercises on the exercise floor and she became a fulltime receptionist.
10. At no time did Ms. Kaiser perform any duties in any locker room or spa areas while male members were present.

11. Ms. Kaiser was admittedly unable to perform any tasks in the locker room or spa area, and there was no need for a fulltime receptionist and/or exercise helper. The spa technicians could handle these duties among themselves. There was a need for one, but only one, full-time spa technician.
12. Ms. Kaiser was not qualified to perform all the duties of a spa technician in the male division and in fact never performed all the duties of a spa technician during her employment as a receptionist and exercise helper on the exercise floor.
13. On October 14, 1977, the new owners, previously unknown to Mr. Rossi, assumed control.
14. Mr. Rossi was informed by the new owners' agents that sales volume must increase. Mr. Rossi asked if he had the authority to eliminate the receptionist position, as a fulltime spa technician was required. He was told yes, and that he could employ three fulltime spa technicians who could perform all the necessary tasks, in all areas of the facilities, and hence provides greater service to members. The position of receptionist-exercise helper was eliminated solely because it was not needed and economically not justified.
15. Mr. Rossi believed Ms. Kaiser could be a valuable employee in the ladies' division as a spa technician. Ms. Kaiser had experience in the health spa industry as an employee and she had been a long time member in the ladies division. Therefore, Mr. asked Ms. Kaiser if she would talk to Mr. Jeff Bair (district manager for the group now operating Silhouette) about working in the ladies division. Ms. Kaiser told Mr. Rossi that there would be no way she would work with women; that she did not like them; and that she could only work with men.
16. Ms. Kaiser did talk to Mr. Bair and prior to her termination was offered a job as a spa technician in the ladies division at her same pay for the same number of hours, at the same facility and with equal or greater opportunity for advancement as that in the men's division. She declined the offer. On several additional

occasions, Mr. Rossi urged Ms. Kaiser to accept the job as spa technician in the ladies division. Each time her response was the same, that she disliked and could not work with women. Mr. Rossi ultimately terminated Ms. Kaiser on November 29, 1977 from her receptionist position and hired a male spa technician.

17. Ms. Kaiser admittedly cannot, because of her sex, perform any of the number of duties required in two-thirds (2/3's) of the facility, *i.e.*, the locker room and spa areas. Members and guests spend more time in these areas than the exercise floor. Some members only use the spa area and do not exercise. Members could not be properly serviced and attended to by a person who cannot, for privacy reasons, ever enter the areas where members spend most or all of their time.

Therefore, at least one technician, in this case male, would have to be hired in the men's division to replace Ms. Kaiser in order to perform the necessary duties in the locker room and spa areas.

18. There were at the time of Ms Kaiser's termination no other males or females, who only worked at the desk and exercise floor in any of Respondents facilities. Ms. Kaiser's job was, therefore, unique in Respondent's organization.
19. After her termination, Ms. Kaiser did not look for new employment to compensate her \$102 weekly salary from Respondent, and she admittedly did nothing to mitigate her damages.
20. Ms. Kaiser does not seek re-employment with Respondent.
21. The evidence discloses Complainant was not qualified to perform all of the duties of a spa technician in the male division.
22. Complainant never requested the job of spa technician in the male division, but rather that her unique job not be terminated.
23. The only job for which Complainant was qualified, and which was available to her at Respondent's facilities, was spa technician in the women's division, which she consistently rejected.
24. Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. Complainant has failed to establish a prima facie case of unlawful sex discrimination in respect of her termination of employment by defendant. There is no evidence that the termination denied her an equal employment opportunity. There is no evidence of a similarly situated employee of the opposite sex to show disparate treatment.
2. Complainant has failed to establish a prima facie case of unlawful sex discrimination concerning her failure to be hired as a spa technician in the men's division. Complainant did not request that job. She admits she was not qualified to perform all the duties required of a spa technician in the men's division.
3. Complainant did not offer any evidence to show that Respondent's actions or reasons for its actions were a mere pretext for discrimination against Complainant because of her sex.
4. Respondent was under no legal duty to retain the unique job position of receptionist-exercise helper for Complainant.
5. There is no legal duty to custom tailor a job or make a special unnecessary job for a person because of his or her sex.
6. Ms. Kaiser was not denied equal opportunities to employment because of her sex. Respondent offered her a job of spa technician in the ladies division for which she was qualified with the same job duties, compensation, hours of employment, working facilities and opportunity for advancement as that of a spa technician in the men's division of respondent.
7. Respondent did not unlawfully discriminate against Complainant in violation of Indiana Civil Rights Act, IC §22-9-1-1 *et seq.*
8. The law and facts are in favor of Respondent and against Complainant and she should take nothing by way of her Complaint.

9. Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

**Dated: August 3, 1979**